For these reasons their Lordships will humbly advise Her Majesty that this Appeal should be dismissed. The appellants must pay the respondent's costs.

Appeal dismissed.

Solicitors: *Lim Kheng Kooi; Presgrave & Matthews.*

ANG CHWEE KEONG v. REGINA.

[A. Cr. J. (Spenser-Wilkinson J.) January 17, 1955]

[Penang — Criminal Appeal No. 58 of 1954]

Common Gaming Houses Ordinance, 1953, ss. 4(1)(c) & 11 — Charge of assisting in carrying on a public lottery — Evidence of expert — Admissibility — Prejudicial evidence.

This was an appeal against the conviction of the appellant on a charge of assisting in carrying on a public lottery an offence under s.4 (1) (c) of the Common Gaming Houses Ordinance 1953. At the trial an expert gave evidence regarding certain documents found in the appellant's possession and said they were betting slips and records of stakes. The expert gave no reasons for his opinion. The learned Magistrate relied on the evidence of the expert and convicted the appellant.

Held: (1) it was the duty of the Magistrate in this case to look at the documents and decide for himself, with the assistance of the expert, whether or not the documents were accounts, memoranda or records of stakes and wages relating to a lottery within the meaning of s. 11 of the Common Gaming Houses Ordinance; (2) as the Magistrate in this case appeared to have relied entirely upon the bare expression of opinion of the expert, the presumption under s. 11 of the Ordinance did not arise and the prosecution had therefore failed to prove its case.

One of the prosecution witnesses gave evidence as follows: "On 12-9-54 at 14.30 hours I received information on oath from an informer to the effect that the proprietor of a sundry shop 3359, Bagan Dalam Road, Butterworth was assisting in carrying on a 100 and 1000 character lottery."

Held: this evidence was clearly inadmissible and prejudicial. In criminal cases Judges should not wait for objections to inadmissible evidence to be taken but should intervene to prevent such evidence being given. The same principle applied to a Magistrate's Court; and if as might happen evidence of this kind slipped out before a witness could be stopped then the Magistrate should make a note that it was inadmissible and should entirely eradicate the effect of such evidence from his mind.

Case referred to:—

(1) *Sim Ah Song v. Rex* (1951) M.L.J. 150.

MAGISTRATE'S CRIMINAL APPEAL.

Lim Kheng Kooi for appellant.

D. C. Jackson (Senior Federal Counsel) for the respondent.

Spenser Wilkinson J.: — The appellant was charged under Section 4(1)(c) of the Common Gaming Houses Ordinance, 1953 with assisting in carrying on a public lottery, to wit "Characters Lottery" and was convicted and sentenced to six months' imprisonment. The only question in the appeal was whether or not the documents found in the appellant's possession were such as to raise the presumption that arises under Section 11 of the Ordinance, which reads as follows:—

"11. A person selling, offering for sale, giving, delivering or collecting lottery tickets or found in possession of ten or more lottery tickets or counterfoils or duplicates of lottery tickets or of any account, memorandum, riddle or record of stakes or wagers in or relating to a lottery shall be presumed until the contrary is proved to be assisting in a public lottery then in progress."

An expert on the 100 and 1,000 number lotteries, P.W. 3 gave evidence explaining the system. Having explained generally how lotteries of this kind worked he stated:—

"When a person wishes to stake on either the 100 or 1,000 number lotteries, he goes to a collector of bets and informs him either verbally or by giving a betting slip to the collector in which are written numbers chosen and the amount of stake for each number. As soon as the money is received the collector of bets prepares a receipt in duplicate and gives the punter a copy and he himself retains the other. As each punter comes in to place his bets the collector also records the stakes on a sheet of paper called a Record of Stakes."

He goes on to say that at the close of the takings the collector hands over the Record of Stakes to the organiser.

The expert then stated that documents Ex. P. 4A, B and C were betting slips of 100 and 1,000 number lotteries totalling $7 and that Ex. P. 4A and P. 4B were original receipts. He gave no reasons for this opinion. He further stated:—

"P.4C is a carbon copy of 100 and 1,000 character lotteries, $38.75. P.4C would be in the possession of a collector only."

He gave no reasons for this opinion either. He then stated:—

"P.7 is a writing pad containing carbon copy receipts on 100 and 1,000 character lotteries; total amount of bets $29. The possessor of these exhibits P.4 and P.7 would be a collector."

No reasons were given for this opinion.

When one looks at the Exhibits P. 4A, B and C one finds they contain columns of figures one below the other which look like sums in dollars and cents though the $ sign is absent and each column has an addition at the foot. The addition is correct in each case. It is quite impossible for any ordinary person to say by looking at these documents how they could be said to be a statement of numbers chosen with the amount of stakes for each number. In the case of Ex. P. 4A it is impossible from looking at the document to discover how the expert arrived at the total of $7 which he says is the total amount staked.

Ex. P. 7 is an even more mysterious document. It is written partly in Chinese characters and partly in Arabic numerals. No translation of this document was before the Magistrate's Court at the trial as it should have been. A translation of the Chinese part of this document was put before me and it consists of a list of various kinds of vegetables in one column, weights in katties in the next column and what look like sums in cents or dollars and cents in the third column. The only feature about this document which distinguishes it from what any ordinary person would look upon as an account of vegetables purchased is that after every five to seven entries on the left hand column appears what looks like a date "15.9.54", the same date appearing each time. Nevertheless the document on the face of it might well be an account given by one person to several people of vegetables bought on their behalf on the same date. It may well be that an expert in the 100 or 1,000 character lottery would be able to point to features in this document which indicate clearly to him that it is not what it purports to be, but is in fact a record of stakes in a lottery. No such evidence, however, was given in this case, and I can find nothing whatever in the record which would justify any Court in coming to the conclusion that it was a record of stakes — much less that it was a record of stakes relating to a lottery.

I am in complete agreement, with respect, with the remarks of Brown Ag. C.J., in the case of *Sim Ah Song v. Rex*[1] where in discussing so-called expert evidence relating to lotteries he says (at p. 151):—

"The responsibility for the determination of this question, as in the case of every question upon which expert evidence is called rested upon the Court and not upon the expert. The business of an expert witness is to draw upon the store of his knowledge and experience in order to explain some matter which his experience should qualify him to understand. He is quite entitled to express his opinion, which indeed is the natural corollary of his explanation. But a bare expression of his opinion has no evidential value at all. Unless he gives an explanation which supplies the understanding of the subject which the Court lacks, the Court is in no better position than it was before to determine the question which it is its duty to determine, and if the Court acts upon a bare expression of the expert's opinion the determination of the question becomes that of the expert and not of the Court."

In my opinion it was the duty of the Magistrate in this case to look at these documents and decide for himself, of course with the assistance of the expert, whether or not those documents were accounts, memoranda or records of stakes or wages relating to a lottery within the meaning of Section 11 of the Ordinance. He appears to me to have relied entirely upon the bare expression of opinion of the expert and, indeed, not having called for a translation of the document Ex. P. 7 he was never in a position to decide what that document was.

In my opinion upon the evidence it was not possible for the Magistrate and it is not possible for this Court to decide what these documents are. The presumption under Section 11, therefore, did not arise and the prosecution failed to prove its case.

Before parting with this case I feel bound to draw attention to a passage in the evidence of P.W. 1, where he says:—

"On 12.9.54 at 14.30 hours I received information on oath from an informer to the effect that the proprietor of a sundry shop 3359, Bagan Dalam Road, Butterworth was assisting in carrying on a 100 and 1,000 character lottery."

This evidence was clearly inadmissible and prejudicial. It is the duty of prosecuting officers to keep their witnesses in check and they should never allow them to give the substance of their information. The proper evidence for a witness of this kind to give is something like this: — "As a result of information I went at 2.30 p.m. to a sundry shop No. 3359 Bagan Dalam Road, Butterworth." It has, moreover, been repeatedly stated that in criminal cases Judges should not wait for objections to inadmissible evidence to be taken but should intervene to prevent such evidence being given. In my opinion the same principle applies to a Magistrate's Court; and if as may happen evidence of this kind slips out before a witness can be stopped then the Magistrate should make a notice that it is inadmissible and should entirely eradicate the effect of such evidence from his mind.

For these reasons I allowed the appeal and quashed the conviction.

Appeal allowed.

Solicitor for the appellant: *Lim Kheng Kooi.*

TEH KIM CHOOI v. REGINA.

[A. Cr. J. (Spenser-Wilkinson J.) January 26, 1955]

[Penang — Criminal Appeal No. 55 of 1954]

Penal Code s. 199 — Statutory Declarations Ordinance 1949 — Declaration not in form prescribed by Ordinance.

The appellant was convicted in the Magistrate's Court upon a charge of making a false statement in a declaration. On appeal it was submitted that the declaration, the subject matter of the charge, was not in accordance with or in the form prescribed by the Declarations Ordinance 1949, as the words "Declared at .....this.....day of.....before me" were left out.

Held: (1) because of the omission of the words "Declared at, etc." from the declaration in this case the declaration was not a declaration within the meaning of s. 199 of the Penal Code; (2) it is not sufficient for a declarant simply to sign the declaration; he should actually declare it before the Justice of the Peace or Commissioner for Oaths before whom it is to be declared.

Case referred to:—

(1) *Velumailum v. Public Prosecutor* (1947) M.L.J. 153.

MAGISTRATE'S CRIMINAL APPEAL.

R. D. Hume for the appellant.